

No. 14/13/87-6Lab./1997.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s The Mandi Adampur Coop. Marketing Society, Hisar *versus* Mohan Kumar.

BEFORE SHRI B.R. VOHRA, PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, HISAR

Reference No. 185

SHRI MOHAN RAM S/O KHIRAJ RAM, VILLAGE EHUNA CHAKKA,
TEHSIL DABWALI, DISTRICT SIRSA

versus

THE MANDI ADAMPUR COOP. MARKEING SOCIETY, HISAR

Present :

Shri N.K. Jain for the workman.

Shri B.D. Mehta for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act'), the Governor of Haryana referred the following dispute between Mohan Ram and the above mentioned management for adjudication to this court,--*vide* Labour Department letter No. Hsr/150-88/19056-60, dated the 4th May, 1988 :--

Whether services of Mohan Ram were terminated or he lost his lieu by absenting himself ? In either event, to what relief is he entitled ?

2. According to the workman, he was appointed as Peon-cum-Chowkidar by the respondent-management by virtue of the resolution dated 24th August, 1977 of the Board of Directors and with effect from 1st October, 1986, he was put in running grade of Rs. 300--450. However, the services of the workman were terminated on 9th December, 1987 without giving him any show cause notice. According to him, the order of termination was illegal and unjustified, having been passed without affording him opportunity of being heard. In the said resolution, it was

mentioned that his services were being terminated because he was involved in a police case. According to the petitioner, he has since been acquitted in that criminal case. He, therefore, prayed for reinstatement with full back wages and other consequential benefits.

3. The management, in its written statement, pleaded that the appointment of the workman was purely on temporary basis and the work and conduct of the petitioner was never satisfactory. It was stated that the enhancement in salary was given in routine and the workman was guilty of misconduct including embezzlement of 200 bags of fertilizer, gambling in office premises, absent from duties and registration of a criminal case against him. According to the management, the workman remained absent from duties willfully with effect from 14th November, 1987 after registration of police case against him and that he did not turn up even after despatch of registered notice and telegraphic notice. It was also stated that termination order was passed after enquiry by the Department. Several preliminary objections were also raised, as they are reflected in the following issues framed on 2nd June, 1989 by the then Presiding Officer, Labour Court, Rohtak :--

1. Whether this Court has no jurisdiction to try the present reference ?
2. Whether the petitioner is estopped from filing the present dispute by his own act and conduct ?
3. As per reference.

4. As per award dated 12th October, 1992, passed by the then Presiding Officer, of this Court, the termination order was found to have been rightly passed and the workman was held to be not entitled to any relief in this case.

5. The said award dated 12th October, 1992 was challenged by the workman by filing a writ petition in the Hon'ble High Court and the High Court, while allowing the writ petition and consequently while setting aside the award dated 12th October, 1992, remanded the case to this Court for fresh adjudication in accordance with law and the management was given liberty to file an application before this Court for permission to lead evidence to substantiate the allegation of misconduct.

6. After the case was received, the management filed an application for permission to lead evidence to prove misconduct of the workman and the same was allowed,--vide order dated 14th September, 1994. Evidence was accordingly led by the management and the workman was also afforded opportunity to produce his evidence, as ordered by Hon'ble High Court.

7. I have heard Shri N.K. Jain, A.R. of the workman and Shri B.D. Mehta, A.R. of the management and have gone through the case file carefully. My findings on the above issues are as under :--

Issue No. 1 & 2:

8. Both these issues were not pressed by the A.R. of the management and were conceded to by him during arguments. Both these issues are, thus, answered against the management.

Issue No. 3:

9. Ruli Ram, Assistant Manager, MW-2 has deposed that the workman was appointed as Peon-cum-Salesman in 1977,--vide resolution, copy of which is Ex.MW-2/1 and that he was removed from the job in 1978, but was again appointed as Peon in 1978 itself,--vide resolution dated 12th September, 1978, a copy of which is Ex.MW-2/3. He further deposed that the workman absented from duties on 14th November, 1987 and despite sending him a telegram and registered letter, he did not report for duty and according to him,--vide letter dated 14th December, 1987, which the workman himself received, he was informed that his services stood terminated with effect from 14th November, 1987. He has also adduced in evidence a copy of resolution passed by Board of Directors on 9th December, 1987, whereby the services of the workman were terminated with effect from 14th November, 1987.

10. This resolution dated 9th December, 1987 (Ex.MW-2/9/A) is of importance. Its perusal would show that the management took notice of the alleged sale of spurious fertilizer by the workman culminating in the registration of a criminal case against him,--vide FIR No. 135, dated 15th November, 1987. It was also mentioned in the resolution that the workman was absent from duties since 14th November, 1987 in the wake of his involvement in the police case and accordingly the management terminated the services of the workman with effect from 14th November, 1987 and this order was conveyed to the workman on 14th December, 1987 as is evident from letter No. 246-247 Ex.MW-2/7.

11. The facts which are admitted and which have come on record, show that after the workman had served for about 10 years, he was removed from service with effect from 14th November, 1987 by order dated 9th December, 1987 and it is admitted case that no domestic enquiry was held by the management before terminating the services of the petitioner. As already stated above, the termination of services of the workman was founded on the allegation of misconduct viz. absence from duties as well as on the grounds that he was involved in a criminal case for which FIR has been registered. It is manifest from record that Ruli Ram, MW-2 had admitted in his cross examination that the case, which was registered against the workman, ultimately resulted in his acquittal,--vide Ex.W-5. There can, thus, be no two opinions that the case relating to sale of spurious fertilizer, to which a reference is made in the resolution dated 9th December, 1987, terminating the services of the workman, which ended in acquittal of the workman, does not constitute any misconduct.

12. The other grounds, on which the termination order is based, is the misconduct relating to absence from duties. With regard to this allegation of misconduct, namely absence from duties, no domestic enquiry was held by the management and it is settled law that where the services of a person was terminated on account of his alleged absence from duty without holding any enquires such termination is liable to be quashed on the grounds of violation of principle of natural justice. A reference with advantage can be made to the observations made by Hon'ble Supreme Court in the authority of L. ROBERT D' SOUZA VS THE EXECUTIVE ENGINEER, SOUTHERN RAILWAY & OTHERS, A.I.R. 1982-S.C. 854. The same view has been expressed in the authority reported as D.K. YADAV VERSUS J.M.A. INDUSTRIES LTD. 1993 (4) SLR-126.

13. Now coming to the evidence led by the management to prove the misconduct, viz the absence from duties, it is admitted by the workman that he absented from duties with effect from 14th November, 1987, consequent upon registration of a criminal case against him and he has stated that he went under ground and after detaining him in police station for 6-7 days, he was kept in judicial lock-up for 6-7 days before he was released on bail. A perusal of judgement of criminal case Ex. M-5 would show that the workman was arrested by the police on 4th December, 1987, and this is so mentioned in para 4 of the judgment. In the previous statement made by the workman on 9th November, 1989, the workman admitted the receipt of telegram from the management. However, in his subsequent statement dated 6th October, 1994, he has denied having received any letter and he has denied his signature on A.D. receipt Ex. MW-2/5. Even if it be assumed that the workman had received the letters Ex. MW-2/6 and MW-2/8, it is to be noted that they do not contain any warning that on his failure to report for duties, his services would stand terminated. The workman has come out with a plausible explanation for his absence because he had apprehension of arrest by the police in a criminal case. I am therefore, of the opinion that the management has failed to prove that it was justified to terminate the services of the workman on the ground of absence from duties.

14. Much emphasis was laid by Shri B.D. Mehta, A.R. of the management on the fact that the workman had admitted having deposited Rs. 29,540 being the price of 200 bags of fertilizer and while relying upon his application dated 19th March, 1984, Ex. MW-2/9, it was sought to be argued that the allegation of embezzlement of 200 bags of fertilizer stood proved. I am afraid I am not in agreement with this argument of Shri B.D. Mehta, A.R. of the management, when the application Ex. MW-2/9 is perused carefully, it would be seen that it does not show any men-area on the part of the workman and the workman had satisfactorily stated therein that it was on account of difference of 200 bags in stock that responsibility was being fastened upon him and he offered to make good the loss by depositing the cost of 200 bags of fertilizer. Even Ruli Ram MW-2 has admitted in cross examination that this application does not contain admission regarding embezzlement of 200 bags of fertilizer. It is also admitted by Ruli Ram that this difference of 200 bags came to the notice when the stock of the management and that of Hafed was reconciled.

15. This matter can be examined from another angle also. This fact came to the notice of the management in March, 1984 and thereafter

the workman submitted the application Ex. MW-2/9 and it was in the month of March, 1984 itself that the requisits amount was deposited by the workman. The termination order was, however, passed in December, 1987, i.e. after expiry of more than 3 years of the detection of alleged misconduct and further the termination order is not based on the said misconduct relating to the alleged embezzlement of 200 bags of fertilizer. In between on 15th October, 1986, --vide its resolution Ex. W-3, the management granted regular grade of Rs. 300-450 to the workman, who was earlier being paid a fixed salary of Rs. 250 per month. It is, therefore, evident that the management did not take cognizance of the alleged misconduct relating to 200 bags of fertilizer and after the workman had deposited the price there of the management appears to be fully satisfied. Obviously, the management can not be allowed to rake up the said incident after a gap of 3 years and to claim it as a foundation for termination, without even referring the same in the termination order.

16. The impugned order is also liable to be quashed on the ground that it was made effective retrospectively, because the resolution terminating the services, was passed on 9th December, 1987 & it conveyed to the workman on 14th December, 1987, but was made effective from 14th November, 1987.

17. In the wake of above detailed discussion, I hold that the termination of services of the workman is unjustified and illegal and he is, therefore, entitled to reinstatement with full back wages. I also hold that the workman has not lost his lien by remaining absent from duties as claimed by the management. The issue is, therefore, decided accordingly.

Relief :

18. In view of my findings on the above issues, the termination of services of the petitioner is held illegal. The same is hereby set-aside. The petitioner is reinstated in the same post forthwith, with full back wages and benefit of continuity of service and other consequential benefits. The reference is answered accordingly, with no order as to costs.

Dated The 10th November, 1994.

B.R. VOHRA,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.

Endst. No. 2401, dated the 17th November, 1994.

A copy with spare copy, is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh for necessary action.

B.R. VOHRA,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.